IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 6984 of 2007()

CP.101/2007 of J.M.F.C.,TALIPARAMBA
CR.NO.156/06 OF TALIPARAMBA POLICE STATION

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PETITIONERS/ACCUSED NO.2,3,5,6, 11 & 13

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1. P.UMMER, S/O.SOOPPY, AGED 36 YEARS, CHAPPARAPPADAVA P.O., KOOVERI AMSOM, KANNUR DISTRICT.

2. P.C.P.MEHAROOF, S/O.ABOOBACKER HAJI, AGED 27 YEARS, PARAPPURATH CHELANTAKATH PUTHIYA PURAYIL HOUSE, CHAPPARAPPADAVA P.O. KOOVERI AMSOM, KANNUR DISTRICT.

3. K.P.C.ISMAIL, S/O.ALI HAJI, AGED 19 YEARS, CHAPPARAPPADAVA P.O., KOOVERI AMSOM, KANNUR DISTRICT.

4. K.MUHAMMED, S/O.ADAM, TEACHER, AGED 29 YEARS, KEERANTAKATH HOUSE, CHAPPARAPPADAVA P.O., KOOVERI AMSOM, KANNUR DISTRICT.

5. P.IQBAL @ IRBAL, AGED 36 YEARS, PULINJIKKAL HOUSE, CHAPPARAPPADAVA P.O., KOOVERI AMSOM, KANNUR DISTRICT.

6. M.MUHAMMED ASHRAF, S/O.ABDULLA HAJI, AGED 23 YEARS, CHAPPARAPPADAVA P.O., KOOVERI AMSOM, KANNUR DISTRICT.

BY ADV. SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENTS:

THE STATION HOUSE OFFICER,
TALIPARAMBA POLICE STATION,
KANNUR DT. REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6984 OF 2007

Dated this the 19th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2, 3, 5, 6, 11 & 13 in a crime registered for offences punishable, inter alia, under Sec.436 read with Sec.149 of the IPC. Investigation is complete. Final report has already been filed. Committal proceedings has been registered. Summons has been received by the petitioners. The petitioners entered appearance through counsel. They apprehend that inasmuch the offences alleged include the offence of Sec.436 of the IPC triable exclusively by a Court of Session, the learned Magistrate may not consider their applications for regular bail on merits, in accordance with law and expeditiously. They have come to this Court with a prayer to issue directions under Sec.438 of the Cr.P.C. The 4th petitioner, it is submitted, is a school teacher and the arrest and incarceration of the 4th

petitioner is likely to result in adverse consequences against him in his employment.

2. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. It is submitted at the Bar that initially only summons

was issued against the petitioners. I must assume that the learned Magistrate had exercised his discretion under Sec.204 of the Cr.P.C. to issue only summons advisedly.

5. In the result, this application is dismissed; but with the observation that if the petitioners surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously in the light of the decision in **Sukumari v. State of Kerala** (2001 (1) KLT 22).

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge